

IT IS ORDERED as set forth below:

Date: October 24, 2012



James R. Sacca
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:	}	CASE No.: 11-85623-JRS
WENDELL WRIGHT,	}	
	}	Chapter 7
Debtor.	}	

WENDELL WRIGHT,	}	
	}	ADVERSARY PROCEEDING
Plaintiff,	}	
	}	No. 12-05329-JRS
v.	}	
	}	
KARIM ZIYAD as assignee for	}	
AVF CONSTRUCTION, LLC,	}	
	}	
Defendant.	}	

ORDER

This matter is before the Court on Defendant's Request for Judgment on the Pleadings. [Doc. 3]. Plaintiff filed a Complaint to commence this adversary proceeding, and Defendant (who is pro se) responded with a document titled "Response/Objection to Complaint for

Turnover and Damages and Request for Judgment on the Pleadings” (the “Response”). In the Response, Defendant either admits or denies all of the allegations in the Complaint, so the Court construes it to operate as an Answer. Additionally, Defendant in the Response requests that the Court “rule on this complaint based on the pleadings.” The Court construes this request as a motion for judgment on the pleadings. Although the Response contains several defenses and explanations, Defendant did not submit any additional evidence along with it.

Rule 12(c) provides that at any time after the pleadings close and before trial, a party may move for judgment on the pleadings. Fed. R. Civ. P. 12(c). And Rule 12(d) provides that if the movant presents matters outside the pleadings, it must be treated as a motion for summary judgment. Fed. R. Civ. P. 12(d). But if no additional matters are presented, the Court applies the same standard as it does to a 12(b)(6) motion to dismiss: whether the complaint states a claim for which relief can be granted. *Strategic Income Fund, L.L.C. v. Spear, Leeds & Kellogg Corp.*, 305 F.3d 1293, 1295 n. 8 (11th Cir. 2002). Here, Plaintiff did not submit any additional matters with his motion; thus the 12(b)(6) standard applies.¹

To state a claim under the 12(b)(6) standard, a plaintiff’s complaint must “contain either direct or inferential allegations respecting all the material elements necessary to sustain a recovery under some viable legal theory.” *Roe v. Aware Woman Ctr. for Choice, Inc.*, 253 F.3d 678, 683 (11th Cir. 2001) (quoting *In re Plywood Antitrust Litigation*, 655 F.2d 627, 641 (5th Cir. Unit A Sept.8, 1981)). But simple “recitals of the elements of a cause of action, supported by mere conclusory statements,” are not enough to survive a motion to dismiss: the complaint “must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its

¹ Technically, Rule 12(c) requires that a motion for judgment on the pleadings be made “after the close of pleadings,” and Defendant’s motion filed concurrently with his Answer was technically not made after the close of pleadings. But because Defendant is pro se and because the Rule 12(b)(6) standard will apply here regardless of when he filed the motion, the Court will overlook this technical error.

face.”” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 570 (2007)). When determining whether a claim is plausible, “the complaint must be construed in a light most favorable to the plaintiff and the factual allegations taken as true.” *Brooks v. Blue Cross & Blue Shield of Florida, Inc.*, 116 F.3d 1364, 1369 (11th Cir. 1997).

Here, Plaintiff’s Complaint states a claim for which relief can be granted because in it Plaintiff alleges that Defendant willfully violated the automatic stay. Section 362(k) of the Bankruptcy Code provides that an individual injured by a willful violation of the automatic stay may recover damages. 11 U.S.C. § 362(k). In the Complaint, Plaintiff (the Debtor) alleges that Defendant (a creditor) “has garnished not less than \$2,645.19 from Debtor” after Debtor filed for bankruptcy protection and triggered the automatic stay. (Compl. ¶ 12). Plaintiff further alleges that he suffered damages because Defendant has failed to obey this Court’s prior order requiring him to return the funds garnished post-petition. (Compl. ¶ 13–15). Accepting these allegations as true—as the Court must under a motion to dismiss standard—the Court concludes that the Complaint contains sufficient factual matter to state a plausible claim. Accordingly, based upon all matters of record, it is hereby

ORDERED that Defendant’s motion for judgment on the pleadings is DENIED.

[END OF DOCUMENT]